Wind Power Projects and USACE Permit Processes

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US Army Corps of Engineers
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Wilmington District

Regulatory Authority

- Section 10 Rivers and Harbors Act of 1899
  - Activities that affect location and navigable capacity of the nation's waters;
  - Dredging and construction (docks, bulkheads, jetties, etc.)

- Section 404 Clean Water Act
  - Discharge of dredged or fill material into jurisdictional waters including wetlands.

Section 10 Rivers and Harbors Act 1899

- Establish permit requirements to prevent unauthorized obstruction or alteration of any navigable water of the United States.
- Construction, excavation, or deposition of materials in, over, or under such waters, or any work which would affect the course, location, condition, or capacity of those waters.

Rivers and Harbors Act Jurisdiction 33 CFR Part 329

- Tidal waters
- Are used, have been used or may be used to transport interstate or foreign commerce
- All ocean waters within three nautical miles from the coastline.
- Some authorities extend further to sea for artificial islands, installations and other devices.

Section 404 Clean Water Act 33 CFR Sec 320-334

- 1) Dams or dikes in navigable waters of the United States (part 321);
- (2) Other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (part 322);
- (3) Activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (part 322);
- (4) Construction of artificial islands, installations, and other devices on the outer continental shelf (part 322);
- (5) Discharges of dredged or fill material into waters of the United States (part 323);
- (6) Activities involving the transportation of dredged material for the purpose of disposal in ocean waters (part 324); and
- (7) Nationwide general permits for certain categories of activities (part 330).

Section 404 of Clean Water Act (1972)

Jurisdiction includes:

- Traditional navigable waters up to 3 miles offshore
- Wetlands adjacent to traditional navigable waters
- Non-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g ., typically three months)
- Wetlands that directly abut such tributaries

The Clean Water Act uses the term "navigable waters" which is defined (Section 502(7)) as "waters of the United States, including the territorial seas." Thus, Section 404 jurisdiction is defined as encompassing Section 10 waters plus their tributaries and adjacent wetlands and isolated waters where the use, degradation or destruction of such waters could affect interstate or foreign commerce.

Types of Department of the Army Permits

- General Permits
  - Regional
  - Nationwide
- Letters of Permission (Section 10 Only)
- Individual Permits

Nationwide Permits

- Nationwide Permit 12
- Nationwide Permit 14
- Nationwide Permit 39
- Nationwide Permit 51
- Nationwide Permit 52

Nationwide Permit 12

- Utility Line Activities
- ½ acre limit for impacts to jurisdictional areas
- Can be used to authorize substations, foundations for towers, poles and anchors and access roads.
- Can be used to authorize power lines over Section 10 waters when no fill is involved.
- Can be used to authorize temporary impacts.
- Requires PCN and NWP verification to be sent to DoD Siting Clearinghouse if used for wind energy generating structure, solar tower or overhead transmission line.
- For power lines over navigable waters, requires PCN and NWP verification to be sent to NOAA NOS for charting.

Nationwide Permit 14

- Linear Transportation Projects
- For the construction, expansion, modification or improvement of roads, highways, railways, trails, airport runways, and taxiways.
- ½ acre limit for impacts to jurisdictional areas.
- Can be used to authorize temporary impacts.
- Cannot be used to authorize nonlinear features such as vehicle maintenance or storage buildings, parking lots, train stations or airport hangers.

Nationwide Permit 39

- Commercial and Institutional Development
- Authorizes the construction or expansion of commercial and institutional building foundations and attendant features.
- Can be used to authorize roads, parking lots, garages, utility lines, storm water management facilities and recreation facilities.
- ½ acre limitation and 300 linear feet of stream limitation
- Requires PCN and NWP verification to be sent to DoD Siting Clearinghouse if used for wind energy generating structure, solar tower or overhead transmission line.

Nationwide Permit 51

- Land-Based Renewable Energy Generation Facilities New permit for the construction, expansion, or modification of renewable energy production facilities.
- Can be used to authorize roads, parking lots, and stormwater management facilities.
- ½ acre limitation and 300 linear feet of stream limitation
- All activities require a pre-construction notification be submitted to the district engineer.
- Requires PCN and NWP verification to be sent to DoD Siting Clearinghouse if used for wind energy generating structure, solar tower or overhead transmission line.

Nationwide Permit 52

- Water-Based Renewable Energy Generation Pilot Projects New permit for the construction, expansion, modification ore removal of water-based wind or hydrokinetic energy generation pilot projects.
- Can be used to authorize land based attendant features including collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.
- ½ acre limitation and 300 linear feet of stream limitation
- Requires PCN and NWP verification to be sent to DoD Siting Clearinghouse if used for wind energy generating structure, solar tower or overhead transmission line.

Nationwide Permit 52 (Con’t)

- Limited to 10 generation units per single and complete project.
- Cannot be placed in coral reef areas, danger zones, restricted areas, federal channels, shipping safety fairways, or open water dredged material disposal sites.
- Upon completion of the pilot project, all structures and fills must be removed unless permitted through another authorization.
- All activities require a pre-construction notification be submitted to the district engineer.

Individual Permit Process

- Application / public notice
- Mitigation sequencing (avoid, minimize, compensate)
- Agency and public comments considered
- 404(b)(1) analysis / public interest review
- Permit issuance or denial
- Appeals process available

Other Federal Regulations that may apply

- Endangered Species Act
- Bald and Golden Eagle Protection Act
- Migratory Bird Treaty Act
- Coastal Zone Management Act
- The National Environmental Policy Act of 1969(“NEPA”)
- Fish and Wildlife Coordination Act
- National Historic Preservation Act
- The Magnuson-Stevens Act
- EFH Final Rule (50 CFR 600)

Federal Environmental Review Agencies

U.S. Environmental Protection Agency

U.S. Fish and Wildlife Service

National Marine Fisheries Service

State Environmental Review Agencies

NC Division of Coastal Management

NC Division of Water Quality

NC Wildlife Resources Commission

NC Division of Marine Fisheries

NC Division of Land Resources

NC Division of Coastal Management

- The Coastal Area Management Act requires permits for development in Areas of Environmental Concern (AEC). You must obtain a CAMA permit for your project if it meets all of the following conditions:
- it is in one of the 20 counties covered by CAMA;
- it is considered "development" under CAMA;
- it is in, or it affects, an Area of Environmental Concern established by the Coastal Resources Commission;
- it doesn't qualify for an exemption.

You’re probably in an AEC if you’re:

- in or on navigable waters within the 20 CAMA counties;
- on a marsh or wetland;
- within 75 feet of the mean high water line along an estuarine shoreline;
- near the ocean beach;
- near an inlet;
- within 30 feet of the normal high water level of areas designated as inland fishing waters by the N.C. Marine Fisheries Commission;
- near a public water supply.

Cooperative USACE/NCDCM Permit Process

- Applies to projects that require a permit from NCDCM and that impact waters or wetlands under USACE jurisdiction.
- NCDCM is the lead agency. They process the permit application and coordinate agency comments.
- Corps uses the DCM application for federal review and submits comments and recommendations to NCDCM, who includes recommended conditions in any issued permit.
- Applicant receives one permit that includes State and Federal authorization for the work.

Summary

- Early coordination is helpful for the applicant and the review and permitting agencies.
- Need to determine extent of USACE jurisdiction within the project area.
- Need to determine total amount of impact (permanent and temporary).
- Need to avoid and minimize impacts as much as possible.
- USACE has several options for authorizing these projects.
- Coordinate early and often during the process.

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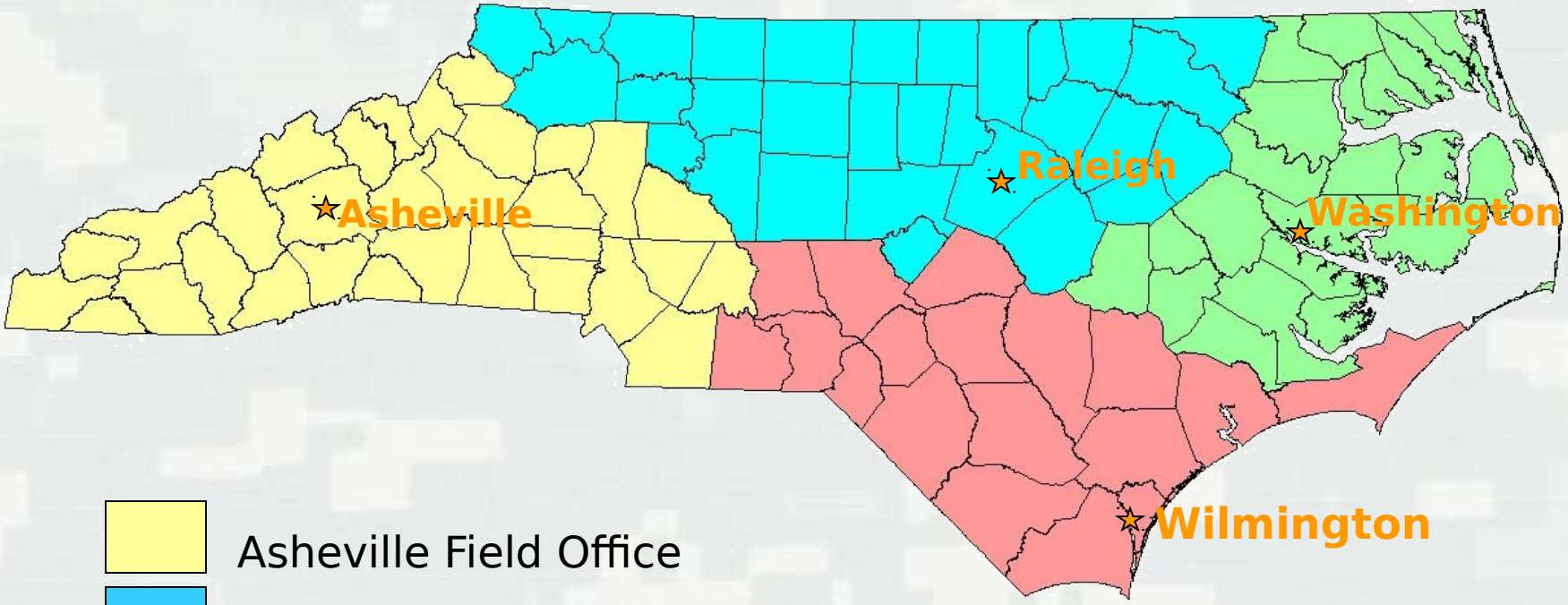

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